

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 21 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

EL RIO BAKERY, INC.,

Respondent.

No. 19-72225

NLRB Nos. 28-CA-216755

28-CA-221086

National Labor Relations Board

ORDER

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

The motion to file a corrected application for summary enforcement (Docket Entry No. 5) is granted.

The corrected application (Docket Entry No. 5) of the National Labor Relations Board for enforcement of its February 28, 2019 order is granted. Unless objections as to form are received within fourteen days of the date of this order, the form of judgment submitted at Docket Entry No. 5 will be the judgment of the court.

The Clerk will serve the proposed judgment submitted at Docket Entry No. 5-3 on respondent.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 19-72225
v.	:	
	:	Board Case Nos.
EL RIO BAKERY, INC.	:	28-CA-216755
	:	28-CA-221086
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, El Rio Bakery, Inc., its officers, agents, successors, and assigns, enforcing its order dated June 26, 2019, in Case Nos. 28-CA-216755 and 28-CA-221086, reported at 367 NLRB No. 99, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, El Rio Bakery, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer  
Molly Dwyer  
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

EL RIO BAKERY, INC.

**ORDER**

El Rio Bakery, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Creating the impression that it is engaged in surveillance of its employees' protected concerted activities.
  - (b) Reducing its employees' work hours, discharging, or constructively discharging its employees because they engage in protected concerted activities.
  - (c) Reducing its employees' work hours, discharging and/or constructively discharging, or otherwise discriminating against its employees because they cooperate in a Board investigation.
  - (d) Requiring that employees complete new job applications because they engage in protected concerted activity.
  - (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Within 14 days from the date of this Order, offer Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
  - (b) Make Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this Decision and Order.

- (c) Make Javier Ponce and Jose Daniel Mendoza whole for any loss of earnings and other benefits suffered as a result of the unlawful reduction of their work hours in the manner set forth in the remedy section of this Decision and Order.
- (d) Compensate Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.
- (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and/or constructive discharges, and within 3 days thereafter notify Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza in writing that this has been done and that their discharges and/or constructive discharges will not be used against them in any way.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in Tucson, Arizona, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the

notice to all current employees and former employees employed by the Respondent at any time since September 22, 2017.

- (h) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT create the impression that we are engaged in surveillance of your protected concerted activities.

WE WILL NOT reduce the work hours, discharge, or constructively discharge any employee for engaging in protected concerted activities.

WE WILL NOT reduce the work hours, discharge, or constructively discharge, or otherwise discriminate against any of you for cooperating in a National Labor Relations Board investigation or for filing a charge with the National Labor Relations Board.

WE WILL NOT require you to complete a new job application because you engage in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL make Javier Ponce and Jose Daniel Mendoza whole for any loss of earnings and other benefits suffered as a result of our unlawful reduction in their hours of work, plus interest.

WE WILL compensate Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and/or constructive discharges of Maria Teresa Tolano, Raquel Herrera Lopez, Javier Ponce, and Jose Daniel Mendoza, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges and/or constructive discharges will not be used against them in any way.

#### EL RIO BAKERY, INC.

The Board's decision can be found at [www.nlr.gov/case/28-CA-216755](http://www.nlr.gov/case/28-CA-216755) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

